

**Editor's note: Reconsideration denied by order dated Oct. 7, 1980**

R. COMBEST

IBLA 80-629

Decided July 21, 1980

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring the Toy millsite (NMC-109190) null and void ab initio.

Affirmed.

1. Millsites: Generally

A millsite claim located on lands which are segregated from mineral entry by a first-form reclamation withdrawal is null and void ab initio. The fact that the land may have been used previously as a millsite is irrelevant in the absence of a showing by the claimant that he is the direct successor to a valid millsite claim located prior to the withdrawal of the land.

APPEARANCES: R. Combest, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On October 15, 1979, R. Combest submitted copies of the notice of location and proof of annual assessment work completed in the preceding assessment year for the Toy millsite claim, 1/ designated as NMC-109190, with the Nevada State Office, Bureau of Land Management (BLM). This information was filed in compliance with the requirements of section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976). The notice of location stated that the claim was located on December 10, 1974.

---

1/ There is no requirement for the performance of annual assessment work on millsites under the 1872 mining laws. See 30 U.S.C. § 28 (1976). However, under 43 CFR 3833.2(b)(1) and (d), adopted citing FLPMA as authority, there is a duty to file an annual notice of intention to hold.

On April 10, 1980, BLM issued a decision declaring this claim null and void ab initio, as the land on which it is situated was withdrawn from mineral entry under first-form reclamation withdrawal Nev-044092, effective April 6, 1956, so that it was not open to mineral entry in December 1974, when the claim was located. Combest (appellant) appealed this decision.

[1] Appellant does not dispute BLM's finding that the claim is situated on withdrawn land. It is established that mining and millsite claims are null and void ab initio if they are located on lands which, at the time of location, are segregated from location under the mining laws. Joe D. Denson, 43 IBLA 136 (1979); The Heirs of M. K. Harris, 42 IBLA 44 (1979); W. Ted Hackett, 39 IBLA 28 (1979); Wilbur G. Hallauer, 36 IBLA 144 (1978); Janelle R. Deeter, 34 IBLA 81 (1978); J. P. Hinds, 25 IBLA 67, 83 I.D. 275 (1976); Leo J. Kottas, 73 I.D. 123 (1966), aff'd sub nom. Lutzenheiser v. Udall, 432 F.2d 328 (9th Cir. 1970).

Appellant maintains that the land "has been a mill site for over 40 years." Even if this were proved, appellant would prevail only if he could show that he is a successor to an interest in a valid millsite claim which was located on this land prior to its segregation from mineral entry. It does not appear that this is the case.

The notice of location which was filed in December 1974 contains no reference to any earlier claim. Thus, it appears that appellant was filing a new location or relocation of this claim by filing this notice of location, that is, initiating new rights in derogation of any previous rights held by others to the claim, rather than filing an amended notice of location of an existing claim. Claims relocated at a time when lands are segregated from mineral entry are null and void ab initio. Wilbur G. Hallauer, supra.

The mere fact that land may have been used as a millsite prior to the withdrawal of the land for other purposes does not validate an unrelated claim filed subsequent to the withdrawal. If appellant had shown that he was the direct successor to a valid interest created prior to the withdrawal, that is, the direct successor to a valid existing right in the land, he might prevail. W. Ted Hackett, supra; Janelle R. Deeter, supra. This he has failed to do.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

---

Edward W. Stuebing  
Administrative Judge

We concur.

---

Anne Poindexter Lewis  
Administrative Judge

---

Frederick Fishman  
Administrative Judge

